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International Executives, Foreign Fiancées, Temporary Workers, and Exchange Visitors

On April 7, 1970, Public Law 91-225 was signed. Congress had expressed its recognition of the growing needs of international business, international cultural exchange and international romance.

Spearheading the drive for the enactment of the new law, were the numerous groups proposing remedial legislation for international executives. The Administration, the AFL-CIO, and private industry, were all agreed that the law should be made more flexible to permit international concerns to bring foreign management, professional or specialist personnel into the United States pursuant to rotation policies for such officials. Indeed, the earlier version of S. 2593 (which eventually became P.L. 91-225), introduced by Senator Ervin, concerned only Western Hemisphere executives and managerial employees. It would have permitted them to come to the United States as immigrants, but would have excluded them from the numerical limitation on Western Hemisphere immigration.

In December 1969, H.R. 15356 was introduced by Congressman Feighan of Ohio. This bill concerned business executives from both the Eastern and Western Hemispheres and treated them as non-immigrants. It was generally preferred to the original S. 2593 since there are almost as many international executives who are rotated into United States branches or home offices from the Eastern as from the Western Hemisphere. And they really are not immigrants, since most of them do not intend to remain permanently, but only for their planned tours of duty. Furthermore, bringing them in as non-immigrants means they will not use immigration visa numbers which thus become available for others.

H.R. 15356 also covered several other groups of aliens whose imme-

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diate need for remedial legislation was generally recognized. All are in the non-immigration category. Liberalized provisions were made for aliens of distinguished merit and ability, coming temporarily to the United States to perform exceptional services, and for aliens who come as exchange visitors. As in the case of international executives, a new group of non-immigrants was created for fiancées (or fiancés) of United States citizens coming to this country to get married.

Some mild Congressional juggling was necessary to achieve enactment of the legislation. S. 2593 had been passed by the Senate in September 1969. The House Judiciary Committee preferred H.R. 15356. The House therefore passed S. 2593 but amended it so that it contained all the provisions of H.R. 15356. This was agreeable to the Senate, and the result was Public Law 91-225.

Both the Justice and State Departments issued amended regulations last April to implement the new law. These may be found in Title 8 Code of Federal Regulations, Parts 103, 212, 214, 245, and 299, and in Title 22, Parts 41 and 42.

International Executives

Before the passage of P.L. 91-225, executives, management personnel and specialists employed by international concerns scheduled for transfer to American branches, had to enter the United States as immigrants. Waiting periods were becoming increasingly long. Western Hemisphere personnel were delayed as long as a year, which had a particularly adverse effect on our normally free and amicable trade relations with Canada and Mexico. Retaliatory legislation was feared against American executives or managers who, in similar circumstances, needed to cross borders or to enter other countries in either the Western or Eastern Hemisphere.

The addition to Section 101(a)(15) of the Immigration and Nationality Act on international executives provides for admission as a non-immigrant of:

> (L) an alien who, immediately preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him.

Commenting on the need for this amendment the House Judiciary Committee stated:[1]

[1]H. Rep. 91-851, 91st Cong. 2d Sess., p. 3.

> The testimony of witnesses clearly establishes that existing law restricts and inhibits the ability of international companies to bring into the United States foreign nationals with management, professional, and specialist skills and thereby enable American business to maintain and improve the management effectiveness of international companies to expand U. S. exports and to be competitive in overseas markets.
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> This interchange of personnel is important since it offers an opportunity for an individual to advance within the worldwide organizations without regard to nationality, it enables foreign nationals to learn American management techniques by placing them in key positions in the United States and thus more effectively manage the affiliate operations of U. S. companies when they return overseas. Experience has demonstrated that a real contribution in the conduct of international business results from the cross-fertilization of ideas through the use of special skills of personnel of different nationalities.
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> Testimony has developed the fact that a significant number of foreign nationals who may be brought to the United States by international companies either intend to return to their home countries or go to third countries in higher management positions. It is significant to note that generally U. S. corporations experience no difficulty in transferring personnel from the United States to other countries.

At the time of this writing there has been only one administrative decision involving the new statute, and it involves subsection (L). In *Matter of Bocris,* Interim Decision #2053 (June 26, 1970), the Immigration and Nationalization Service Regional Commissioner for the New York area held that under section 101(a)(15)(L) of the Immigration and Nationality Act as amended, an alien was eligible for non-immigrant classification as an intra-company transferee notwithstanding the fact that he was the beneficiary of an approved sixth-preference visa petition. It was pointed out that immediately preceding the filing of the non-immigrant visa petition, the alien had been employed for more than one year abroad as an executive in the petitioner's French affiliate, and that his transfer to the United States as an executive was being sought on a temporary basis. Counsel for the petitioner had pointed out that at the time the sixth preference immigrant visa petition was filed, there was no subsection (L), and admission as an immigrant was the only way in which the alien could be brought to the United States.

This is an interesting decision since the Service generally takes the view that a pending petition for an immigrant visa is inconsistent with a finding that an alien qualifies as a bona fide non-immigrant. The use of the sixth preference for intra-company executives had been dictated by expediency, however. Now the situation is different since the (L) category is available. It may be anticipated that in cases in which a sixth-preference petition was filed after the enactment of P.L. 91-225, the Service would not reach the same conclusion which it reached in the *Bocris* case.

In regard to the administration of subsection (L) and particularly the need to show that the beneficiary does not intend to remain in the United States permanently, the House Committee Report[2] states:

> Consideration of the petition will involve verification of the prior employment of the individual for a continuous period of at least 1 year abroad by a company affiliated with the parent, subsidiary, or branch located in the United States and verification that the subject of the petition is in a managerial, executive, or specialized knowledge capacity and is the subject of a transfer to the United States. The applicant would not be issued a non-immigrant visa or admitted to the United States unless he established that he intended to remain in this country temporarily. The committee is convinced that no international company would jeopardize or endanger its future need for a corporate executive rotation by attempting to misuse or abuse such procedure as a vehicle for immigration.
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> A survey of international corporations indicates that a 3-year admission under the proposed 'L' type visa would be sufficient. However, this should not be construed as a basis to deny bona fide requests for a renewal or extension, nor should the 'L' visa holder be barred from due consideration of an application for adjustment of status in the United States. This would conform to the opportunity available to other non-immigrants.

A petition for an L visa is filed with the Immigration Service on revised Form I-129 B. The filing fee is $25, and it is not contemplated that a labor certification will be necessary.

At the end of the fiscal year 1969 (not quite three months after enactment of P.L. 91-225), over 500 petitions for L visas had been submitted to the Immigration and Naturalization Service.

Fiancées

The new sub-paragraph K of Section 101(a)(15) of the Immigration and Nationality Act constitutes the first permanent provision in the law for the admission of fiancées or fiancés. After World War II, there was legislation benefiting the fiancées of members of the Armed Forces, but it was temporary.

Explaining the need for this new category of non-immigrants, the House Judiciary Committee stated:[3]

> Under existing law, the fiancée or fiancé generally cannot qualify as a bona fide non-immigrant since he or she expects to reside in the United States after marriage. As intending immigrants, they must apply for immigrant visas under the nonpreference portion of the Eastern Hemisphere limitation or under the Western Hemisphere limitation. At present, nonpreference numbers are not immediately available in the Eastern Hemisphere and applicants chargeable to the Western Hemisphere limitation face a waiting period of 1 year or more before a visa number may be available.

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[2]H. Rep. 91-851, 91st Cong. 2d Sess., p. 6.
[3]H. Rep. 91-851, 91st Cong. 2d Sess., p. 5.

Sub-paragraph K requires that the petitioner be a United States citizen. The petition is submitted on Form 1-129 F. In addition to his citizenship the petitioner will have to establish that he has a bona fide intention to marry and that there are no legal impediments to a marriage (such as proof of the termination of a previous marriage, etc.) There is no requirement that the parties must have met before, but the beneficiary can be only an alien who is abroad. If the beneficiary has children, the petition may include them. The fiancée will get a K-1 visa, the children K-2 visas.

The filing fee for K visas is $10. An approved petition is valid for four months. The period of admission is ninety days, and no extensions will be granted. The marriage to the petitioner must take place within the ninety-day period. If it does not, the beneficiary will have to leave the United States, or become subject to deportation proceedings on the ground of having remained longer than the period of his or her admission. It is not possible to change a K visa to some other non-immigrant classification. As of June 30, 1970, the Immigration and Naturalization Service had received over 1,200 petitions for K visas.

After marriage to the petitioner, the beneficiary applies for permanent residence on Form I-485. This is an adjustment-of-status application. Natives of the Western Hemisphere, now otherwise ineligible for adjustment of status under Section 245 of the Immigration and Nationality Act, are eligible when they have come with K visas, since the application is made under new Section 214(d).

There is a $25 filing fee which must accompany Form 1-485 (and a separate one is necessary for each child). Permanent residence becomes effective as of the date of approval of the application.

Temporary Workers

Section 101(a)(15)(H) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101[a][15][H]) provides for the admission of aliens coming to the United States to work temporarily. This provision first appeared in the Immigration and Nationality Act of 1952.[4] The Immigration Act of 1924 had permitted the entry of temporary visitors for business or pleasure. The word "business" was narrowly interpreted, however, not to include aliens coming here temporarily to take employment. The 1952 Act sought to remedy this situation by creating a new non-immigrant class of temporary workers. Before the 1970 amendment, Section 101(a)(15) provided non-immigrant status for:

(H) an alien having a residence in a foreign country which he has no

[4]Act of June 27, 1952, P.L. 82-414, 66 Stat. 163.

> intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform temporary services of an exceptional nature requiring such merit and ability; or (ii) who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country; or (iii) who is coming temporarily to the United States as an industrial trainee;

P. L. 91-225 amended the language following "(i)"—the provisions concerning aliens of distinguished merit and ability, coming to the United States to perform exceptional services. Such aliens are given visas with the symbol H-1. No labor certification is necessary. The amendment eliminated the word "temporary" before "services." As the law read before this, not only must the alien have been coming to the United States without the intention of remaining in this country permanently, but he must have been coming to do a job which was basically temporary in nature. Examples would be a specific series of concerts or an art exhibit. Thus, hospitals were unable to bring in foreign doctors as interns under this provision, since such assignments were not considered "temporary services."[5]

In the House Judiciary Committee Report on S. 2593, the problem of "temporary services" was described in the following language:[6]

> Section 101(a)(15)(H)(i) is amended to permit the entry of aliens into the United States for a temporary period to perform services which may be temporary in nature or permanent in nature. Under present law, an alien of distinguished merit and ability who is coming temporarily to perform temporary services of an exceptional nature requiring special merit and ability may be admitted as a non-immigrant. Hence, an alien is not entitled to such non-immigrant status even if coming to the United States temporarily if his employment will be in a position or occupation which is of a continuing or permanent nature. The elimination of this restriction in the law would be of great value to the United States, for there are exceptionally skilled aliens, such as professors and doctors, whose temporary services are needed in the United States, but who are ineligible for temporary admission because the nature of the position is permanent.

The Immigration and Naturalization Service did not oppose this amendment when it was before the Congress. Indeed the Service had become increasingly sensitive to this problem as it affected colleges and universities. Efforts had been made administratively to interpret the "temporary services" provision more broadly to accommodate academic needs. For example, there were decisions permitting replacement, with qualified aliens, of professors on sabbatical leave.[7]

H-1 visas are also issued to professional athletes and entertainers if they

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[5]Matter of M.S.H., 8 Immigration and Nationality Reports (IN) 460 (1960).
[6]H. Rep. 91-851, 91st Cong. 2d Sess., p. 4.
[7]*See, e.g.*, Matter of Michigan State University, 10 IN 642 (1963).

qualify as persons of distinguished merit and ability. In the case of athletes, consideration is given to their standing, licenses and to how long they have pursued their specialties. To determine whether a professional entertainer is a person of distinguished merit and ability professional organizations in his field may be consulted. In the case of persons of such reknown that he or she has an international reputation this might not be considered necessary. In doubtful cases, the Immigration and Naturalization Service will consider expert opinion, including critical reviews, popularity, box office appeal and contractual arrangements.[8] It is up to the attorney representing the applicant for the temporary visa properly to document the application. In its Report, the House Judiciary Committee emphasized that the elimination of "temporary" before services would in no way affect the existing administrative practice in interpreting the phrases "persons of distinguished merit and ability" and "exceptional services." The Report[9] states:

> There are ample interpretations of the terms "distinguished merit and ability" in judicial decisions and administrative decisions. Distinguished merit and ability implies a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person so described is prominent or has a high level of education in his field of endeavor. It is the policy of the Immigration and Naturalization Service, in the course of processing petitions of this nature, to request related organizations and associations, or outstanding individuals in their respective fields, to provide advisory opinions regarding the qualifications, skills and talents of the various beneficiaries.
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> To be eligible for admission as a nonimmigrant under section 101(a)(15)(H)(i), the beneficiary must have a residence in a foreign country which he has no intention of abandoning. He must be a person of distinguished merit and ability, and he must be coming to the United States temporarily to perform his exceptional services.
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> This amendment is not intended to enlarge the scope of section 101(a)(15)(H), but merely to lift the restriction on the temporary nature of the employment of services. The existing petition procedure and criteria to establish 'distinguished merit and ability' and interpretation of 'exceptional services' is intended to continue in force.

It will be observed that no change in the term "temporary services" has been made concerning aliens covered by the provisions of subdivision (ii) of Section 101(a)(15)(H). These are persons coming to the United States to perform ordinary labor where available American workers cannot be found. Such aliens receive H-2 visas. The petition for their entry is generally filed by the prospective employer.[10] A labor certification is usually necessary.

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[8] 8 CFR 214.2(b)(2)(i) Matter of Shaw, 11 IN 277 (1965).

[9] H. Rep. 91-851, 91st Cong. 2d Sess., p. 4.

[10] *See* Gordon and Rosenfield, Immigration Law and Procedure, § 2.14b for a discussion of the documents required to accompany such a petition.

It was not an oversight that the word "temporary" before "services" was retained for the groups of workers who come in with H-2 visas. The Labor Department and representatives of the AFL-CIO in testifying before the House Immigration Subcommittee strongly recommended the retention of the word "temporary" with respect to the services of such workers. It was pointed out that aliens such as seasonal agricultural workers are frequently employed under sub-standard conditions. Earlier studies on migrant workers vividly describe these conditions – sometimes in effect constituting peonage.[11] Accordingly, it was emphasized that their assignments should be kept temporary. This is important not only from the aliens viewpoint, but also to avoid weakening the bargaining powers of Americans doing comparable work.

P.L. 91-225 also deletes the word "industrial" where it appears before "trainees" in subdivision (iii) of Section 101(a)(15)(H). Such aliens receive visas with the symbol H-3. A labor certification is generally not required.

As pointed out in the House Judiciary Committee Report, subdivision (iii) as amended "would not be limited to an industrial trainee and would permit the admission of a trainee in agriculture, commerce, finance, government, transportation or the professions."[12] It was also emphasized that this amendment codified what had actually become the administrative practice prior thereto.[13]

While the "industrial" limitation was very loosely interpreted administratively, the "trainee" aspect of the alien's work was carefully scrutinized. For example, an H-3 petition by a jobber of scientific periodicals in foreign languages was denied when the petition failed to set forth a training program and specific skills in which the alien was to be trained.[14] Likewise, an H-3 petition by the operator of a fruit orchard to train an alien in American methods of fruit raising was denied when the beneficiary was the graduate of an agricultural college with twelve years experience,[15] who would be working an 8-hour day, six days a week. It was concluded that this would constitute full-time employment and that any training would be incidental. It has also been held that the H-3 classification is available only to train non-immigrants who will use the training in a foreign country.[16] It may be anticipated that these aspects of the administration of alien trainee programs will be continued.

[11] *See* Hadley, *A Critical Analysis of the Wetback Problem*, 21 LAW CONTEMP. PROBLEMS 334 (1956); Nader, *Legislative Neglect Keeps Migrants Mixed in Asiatic Poverty*, 26 HARV. LAW REV. (No. 10) p. 3, April 12, 1958; Study of Population and Immigration Problems, Special Series No. 11, House Judiciary Committee, Subcommittee No. 1 (G.P.O. 1963).

[12] H. Rep. 91-851, 91st Cong. 2d Sess., p. 5.

[13] *See* Gordon and Rosenfield, *supra*, § 2.14a.

[14] Matter of Kraus Periodicals Inc., 11 IN 63 (1964).

[15] Matter of Sasano, 11 IN 363 (1965).

[16] Matter of Glencoe Press, 11 IN 764 (1966).

The last change in Section 101(a)(15)(H) was the addition of a provision to permit the entry of an alien spouse and children who are accompanying, or following to join, the holder of an "H" type visa. This provision met practically no opposition since it encourages the unification of families. A new visa classification (H-4) has been established for the dependents of the holders of H-1, H-2 and H-3 visas.

Exchange Visitors

The majority of foreign doctors who staff our hospitals and research centers have come to the United States as exchange visitors. We also have nurses, engineers, scientists, teachers and other professionals who are in this country with the same non-immigrant status. They have come under the provisions of Section 101(a)(15)(J) of the Immigration and Nationality Act as amended. Such aliens receive visas with the symbol J-1. Their spouses and children are also permitted to enter with exchange visitor status, if they are accompanying or coming to join the principal alien. These dependents receive J-2 visas.

The program to encourage better international relationships through a mutual exchange of experts and professional persons was initiated by the Information and Educational Exchange Act of 1948.[17] This act was supplanted by the Mutual Educational and Cultural Exchange Act of 1961.[18] Since then, the number of aliens admitted each year as exchange visitors has been mounting steadily. At the end of the fiscal year 1969, 47,175 persons had been admitted with J-1 visas, and 15,301 J-2 visas were issued to their spouses and children.[19]

Exchange visitors come to participate in specific programs approved by the Secretary of State and formulated by a United States agency, an international agency, educational institutions, foundations, hospitals and miscellaneous business and industrial enterprises. Each approved program has a serial number, and before an alien is given a J visa he must execute a Form DSP-66 which states the number of the approved program in which he will participate and describes the time and terms of his visit.[20]

In addition, the alien must satisfy the consul that he himself has, has been assured, or will earn sufficient funds in an approved manner to maintain himself and his family while in the United States. Programs vary—some are U. S. government financed, some financed by the government of the country from which the alien comes, and others are privately

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[17]Act of Jan. 27, 1948, Sec. 201, 62 Stat. 6.

[18]Act of Sept. 21, 1961, P.L. 87-256, 75 Stat. 527.

[19]1969 INS Annual Report, p. 67.

[20]For details on the documents necessary to accompany an application for admission of an exchange visitor, *see* Gordon and Rosenfield, § 6.8.

financed. Until the recent amendments, all of these were acceptable, and the nature of the program did not in itself affect the alien's immigration rights or disabilities. As will be shown, the law has been changed materially in this regard.

Exchange visitors are admitted for periods not to exceed one year, but yearly extensions of the original admission have been granted readily so long as the alien continues to participate in an approved program. To avoid attempts by these aliens to remain here indefinitely, an administrative practice developed of fixing specific periods for particular groups after which they were expected to leave. Doctors could expect extensions up to five years, research scholars—three years, teachers and instructors—two years, graduate nurses—two years, medical technologists—eighteen months to three years, and business and industrial trainees—eighteen months.

It is at the end of these periods, when the alien is denied any further extensions, that he is apt to consult a lawyer. Before the passage of P.L. 91-225, an exchange visitor was ineligible under Section 212(e) of the Immigration and Nationality Act to apply for an immigration visa, or for a different non-immigrant status, unless he returned to his own country or resided elsewhere abroad for two years, or unless this requirement was specifically waived. Each exchange visitor was required to sign a statement that he understood this aspect of the terms of his admission.

The ineligibility of exchange visitors to adjust to the status of permanent residents was based on the fundamental concept of the exchange program. It was the conviction of the legislative and executive branches of government that the exchange-visitor program contemplated that aliens should use their acquired knowledge and skills to benefit their own countries. No one questioned this basic theory. As a practical matter, however, many aliens came as exchange visitors because immigration visas were not available to them, and because their own countries were economically unable to support many of their professional people. After several years of further specialist training in the United States, many found themselves overtrained. For example, a physician might have spent five years training in opthalmological surgery. He may have come from a provincial town in his own country whose nearest hospital has only rudimentary equipment for general surgery, and where physicians are expected to treat everything from measles to menopause. This physician's painstakingly acquired expertise would, to all intents and purposes, be wasted.

In addition to the anticipated frustrations of being unable to use their specialized skills and training, exchange aliens were inevitably attracted by the propsects of higher income in the United States. A doctor or dentist in

the Philippines, for instance, might have been earning $100 or $125 a month on the staff of a government hospital. There might have been five qualified applicants for the position which he left. In this country, on the other hand, in view of the shortage of doctors and dentists, he may have been earning fifteen to twenty thousand dollars per year as an alien physician on the staff of an institution. If he can become a permanent legal resident, and pass his local examinations as a specialist, his income might soon be $30,000 to $40,000 per year.

It is not surprising that waivers of the two-year foreign residence requirement were sought by many exchange visitors, particularly by physicians. Under section 212(e), however, such waivers could be obtained only at the request of an interested U.S. government agency or upon proof of exceptional hardship to the exchange alien's citizen, or legally resident alien, spouse or child.

Waivers of the foreign residence requirement at the request of an interested U. S. government agency have been consistently difficult to obtain. The policy on hardship waivers has see-sawed. Before the 1961 amendments, they were granted quite generously. Thereafter, the policy of the Immigration Service became more rigid in the light of its understanding of the purpose of the new legislation. The exchange program was to be so administered as mutually to benefit the United States and foreign countries whose specialists might be coming to this country to study. We were to avoid giving other countries a justifiable basis for charging that the program resulted in a "brain drain." Accordingly, the Service requested proof that the hardship which it was alleged the spouse or child would suffer must be truly "exceptional." When the present writer obtained such a waiver for a client in Baltimore in early 1963, she was advised by local immigration officials that this was the first one they had seen approved in months.

In the ensuing years, the pendulum again swung toward a more relaxed policy. Hardship waivers became somewhat less difficult to obtain. But the majority of waiver applications were still denied.[21]

Under the 1970 amendments to Section 212(e) some exchange aliens are no longer subject to the two-year foreign residence requirement. However, those who are still subject to the requirement can now only satisfy it by residing in the country of nationality or last residence.

Now the two-year foreign residence requirement applies only to an exchange alien: 1) whose participation in an exchange program at any time was financed directly or indirectly, in whole or in part, by an agency of the

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[21]*See* Gordon and Rosenfield, *supra*, § 6.88. A useful summary of the factors that might be considered in determining whether exceptional hardship exists is given on p. 6-55.

U. S. government or by the government of the alien's nationality or last residence; or 2) who came to the United States to participate in an exchange program or acquired exchange alien status, after the country of his nationality or last residence had been designated by the Secretary of State as requiring his specialized knowledge or skill.

The law concerning exchange aliens with J visas has been further liberalized by the addition of two new provisions under which an alien may be granted a waiver. This is of particular help to the unmarried exchange alien without family ties in the United States, who previously could have little hope of getting a waiver. Under the new provisions, waivers may be granted by the Attorney General upon the favorable recommendation of the Secretary of State when: 1) The alien would be subject to persecution because of race, religion or political opinion in the country of his nationality or last residence; or 2) The country of the alien's nationality or last residence furnishes the Secretary of State with a statement in writing that it has no objection to the issuance of a waiver in the case of the alien.

The provision of P.L. 91-225 retaining the foreign residence requirement for aliens whose participation in an exchange program was government-financed has necessitated reexamination of exchange programs by the State Department. A preliminary statement was issued in September by the Facilitative Services Staff of the Bureau of Educational Affairs. Generally, exchange visitor programs with DSP members beginning with a "G" designation will be found to have been financed directly or indirectly by the U. S. government. There is a fairly long list of exceptions, however, which may be obtained from the Bureau. Likewise, most exchange programs with DSP members beginning with the designation "P" will be considered as *not* government financed. Again exceptions have been made, however. To be sure that an exchange visitor has not participated in a government financed program it would be advisable to check his DSP numbers with the State Department lists.

The State Department has also developed new procedures for the administration of the provision in P.L. 91-225, permitting the waiver of the foreign residence requirement for an exchange alien whose government states it has no objection thereto. In a discussion of these procedures dated August 1970, the Facilitative Service Staff of the Bureau of Education and Cultural Affairs stated:

> The Department has concluded that, regardless of what department or agency of the foreign government may be responsible for preparing the statement, it should be transmitted through *official channels*, i.e., from the country's foreign office to the Department through the United States Mission in the country of the exchange visitor's nationality or last residence or through the country's Chief-of-Mission or his designee to the Secretary of State in the form

> of a diplomatic note. This procedure is necessary to enable the Department to verify the authenticity of such a statement.

There is also the following important admonition:

> Some exchange visitors have incorrectly assumed that a "no objection statement" by their governments guarantees that a waiver will be granted. The Department wishes to emphasize that the submission of such a statement by a foreign government serves only to initiate the consideration of the visitor's request for a waiver.

It is pointed out that in the past very few waivers have been granted for exchange visitors participating in programs financed by the U. S. government. And no substantial liberalization of this policy may be anticipated because it "would tend to defeat the purpose and the intent of the Mutual Educational and Cultural Exchange Act of 1961 (Public Law 87-256)."

It should be emphasized that exchange aliens who are still subject to the foreign residence requirement, and who do not qualify for waivers on either of the two new bases, may still qualify for hardship waivers, i.e., exceptional hardship to the exchange alien's citizen or legally-resident alien spouse or child. Applications for such waivers are made on Form I-612, and the filing fee is $25.

Proposed Legislation

P.L. 91-225 is the 91st Congress' principal contribution to aliens seeking to enter the United States. Several other bills envisaging major changes in the immigration and nationality laws have been introduced, however. S. 3202, S. 4309, H.R. 9112, H.R. 15902, H.R. 17370 and H.R. 18923 all contain significant proposals on overhauling the preference system for immigrants from the Eastern Hemisphere and establishing a comparable system for the Western Hemisphere. Likewise, the creation of a Board of Visa Appeals in the State Department and the establishment of a Commission on Nationality and Naturalization have been proposed. The Administration-sponsored S. 4309 and H.R. 18923 would tighten up the statutory provisions on judicial review of administrative orders in immigration cases. These bills also contain new criminal sanctions to be imposed against aliens or their employers for violations of specific immigration provisions.

Undoubtedly the 91st Congress will not have time to act on this proposed legislation. These bills do, however, provide reliable forecasts of what may be introduced in the next session.